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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/938,184

08/23/2001

Walter F. Anderson

CM04882H

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08/23/2006

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EXAMINER

SCHUBERT, KEVIN R

ART UNIT

PAPER NUMBER

2137

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/938,184

Applicant(s)

ANDERSON ET AL.

Examiner

Kevin Schubert

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2137

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

Claims 12-18 have been considered. Upon careful review of Applicant's arguments submitted 8/14/06, Examiner maintains the rejections presented in the previous action.

5

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

10

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15

Claims 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Gardeck, U.S. Patent No. 5,471,532.

As per claim 12, the applicant describes a method comprising the following limitations which are met by Gardeck:

20

a) receiving, by a manual key delivery device from a centralized key management facility that is remote from the manual key delivery device, one or more key management messages including indicia of respective target communication devices that are to receive the key management messages (Col 3, line 45 to Col 4, line 9);

b) operably connecting the key delivery device to one or more candidate encryption devices (Col 3, line 45 to Col 4, line 9);

25

c) determining, by the key delivery device upon connecting to the one or more candidate encryption devices and based on the indicia included in the one or more received key management messages, which ones of the candidate encryption devices are target encryption devices (Col 3, line 45 to Col 4, line 9);

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d) delivering, from the key delivery device, one or more key management messages to the candidate encryption devices determined by the key delivery device to be target encryption devices (Col 3, line 45 to Col 4, line 9).

5 As per claim 13, the applicant describes the method of claim 12, which is met by Gardeck, with the following limitation which is also met by Gardeck:

a) determining, by the key delivery device upon connecting to the one or more candidate encryption devices, which ones of the candidate encryption devices are not target encryption devices (Col 3, line 45 to Col 4, line 9);

10 b) not delivering key management messages to the candidate encryption devices determined by the key delivery device not to be target encryption devices (Col 3, line 45 to Col 4, line 9).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

15 rejections set forth in this Office action:

20 (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

25 Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardeck in view of Doiron, U.S. Patent No. 5,481,610.

As per claim 14, the applicant discloses the method of claim 12, which is met by Gardeck, with the following limitation which is met by Doiron:

30 Further comprising the step of displaying, by the key delivery device upon a successful delivery of a key management message to a target encryption device, a message indicative of the successful

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delivery of the key management message to the target encryption device (Doiron: Col 8, line 62 to Col 9, line 15);

Gardeck discloses all the limitations of claim 12. However, Gardeck appears to be silent as to displaying a message indicative of successful delivery of a key message to a target encryption device.

5 Doiron discloses a rekeying system in which the key delivery device has a display. When a key is delivered, the user is able to tell if the delivery was a success. If the transfer is a success, "Good transfer" appears on the screen.

It would have been obvious to one of ordinary skill in the art at the time the invention was filed to combine the ideas of Doiron with those of Gardeck and display a message indicative of a successful  
10 transfer because doing so allows a user to know that successful transmission of a key has completed.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gardeck in view of Miller, U.S. Patent No. 6,208,612.

15 As per claim 15, the applicant describes the method of claim 12, which is met by Gardeck, with the following limitation which is met by Miller:

Further comprising the step of displaying, by the key delivery device upon an unsuccessful delivery of a key management message to a target encryption device, a message indicative of the unsuccessful delivery of a key management message to the target encryption device (Miller: Col 10, lines  
20 20-34);

Gardeck discloses all the limitations of claim 12. However, Gardeck appears to fail to disclose displaying a message indicative of an unsuccessful transfer. Miller discloses the idea that a message indicative of an unsuccessful transfer may be displayed. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to combine the ideas of Miller with those of Gardeck  
25 because doing so allows a user to know that a transmission has been unsuccessful.

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Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardeck in view of Schneier (Schneier, Bruce. Applied Cryptography. CRC Press. 1996. pages 1-2).

As per claims 16-18, the applicant describes the method of claim 12, which is met by Gardeck,  
5 with the following limitations:

a) determining a target destination identifier associated with the encrypted key management message (Gardeck: Col 3, line 45 to Col 4, line 9; Schneier: pages 1-2);

b) delivering the encrypted key management message to a target communication device corresponding to the target destination identifier (Gardeck: Col 3, line 45 to Col 4, line 9; Schneier: pages  
10 1-2);

Gardeck discloses all the limitations of claim 12. Gardeck, however, is silent to whether the key management message is encrypted. Schneier discloses the well-known idea that a message may be encrypted. It would have been obvious to one of ordinary skill in the art at the time the invention was filed to combine the ideas of Schneier with those of Gardeck because doing increases the security associated  
15 with a message.

### ***Response to Arguments***

Applicant's arguments filed 8/14/06 with respect to the 102(b) rejection of claim 12 under Gardeck have been fully considered but they are not persuasive. Applicant presents the following argument:

20 1) No manual key delivery device is used to update the communication units, only the centralized key management controller

Examiner respectfully disagrees. Gardeck teaches a method of receiving by a key delivery device (e.g. first key unit, 102 of Fig 1) from a centralized key management facility (e.g. home key unit, 25 101 of Fig 1) key management messages, operably connecting the key delivery device to one or more candidate encryption devices (e.g. 104 of Fig 1), determining which ones of the candidate encryption

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devices are target encryption devices, and delivering, from the key delivery device, one or more key management messages to the target encryption devices.

Regarding 1), Applicant argues that the Gardeck patent is very clear that the present invention provides for a method for over-the-air rekeying of roaming communication units. Applicant then concludes that no manual key delivery device is used to update the communication units, only the centralized key management controller (Remarks: page 1, lines 8-11).

Examiner notes his confusion over the argument Applicant is making. It appears that Applicant is arguing that the centralized key management controller is the only participant in the updating of the communication units. Examiner disagrees with such an argument. As discussed in the foregoing remarks, Gardeck teaches a key delivery device (e.g. first key unit, 102 of Fig 1) that is used to update the communication units. The centralized key management controller is thus not the only device used to update the communication units.

It is also unclear whether Applicant is arguing that the first key unit of Gardeck does not read on a "manual key delivery device". Examiner disagrees with this contention as well. Absent explicit disclosure to the contrary, a disputed claim term is given its broadest reasonable interpretation *Hyatt, 211 F.3d at 1372* (see also MPEP 2111). The "broadest reasonable interpretation" rule recognizes that "before a patent is granted the claims are readily amended as part of the examination process". *Burlington Indus. V. Quigg, 822 F.2d 1581, 1583 (Fed. Cir. 1987)*. Thus, a patent applicant has the opportunity and responsibility to remove any ambiguity in claim term meaning by amending the application. *In re Prater, 415 F.2d 1393, 1404-1405 (CCPA 1969)*. Examiner finds nothing which precludes the first key unit of Gardeck from reading on a manual key delivery device, only, at best, an example from the Specification that a manual key delivery device may be a KVL. As such, Examiner maintains the previous rejection.

### **Conclusion**

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of

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the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Schubert whose telephone number is (571) 272-4239. The examiner can normally be reached on M-F 7:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KS



**EMMANUEL L. MOISE**  
**SUPERVISORY PATENT EXAMINER**